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October 15, 2009

Senator Lawrence Bliss  
Representative Charles Priest  
And Members of the Joint Standing Committee on Judiciary  
2 State House Station  
Augusta, ME 04333-0002

RE: Public Law 2009, Chapter 230, An Act to Prevent Predatory Marketing Practices Against Minors

Dear Senator Bliss, Representative Priest, and Members of the Judiciary Committee,

We have been asked for our comments and suggestions regarding Public Law 2009, Chapter 230. Previously, Assistant Attorney General Christopher Taub submitted to the Committee a summary of the litigation challenging Chapter 230 (LD 1183).

I would like to propose some questions that the Judiciary Committee might consider when determining your course of action on this law. They are:

What specific online marketing activities does the legislature want to prohibit other than what is prohibited in the federal Children's Online Privacy Protection Act ("COPPA")?

COPPA has "safe harbor" provisions that LD 1183 lacks--Does the legislature wish to enact such provisions, while trying to avoid a preemption or a Commerce Clause problem? The "safe harbor" provision of COPPA allows industry or other groups to ask the Commission to approval self-regulatory guidelines that implement the protections of the Commission's Final COPPA Rule.

If there are specific online activities not covered by COPPA that the legislature desires to address, how can it address those specific activities and only those activities? Otherwise the legislation is likely to be overbroad and violate First Amendment Rights that protect free speech.

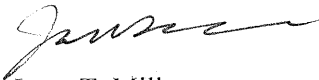
Does the legislature intend to restrict the rights/opportunities of minors between the ages of 14 and 18 to buy goods and services and obtain or provide information on line, by mail, by telephone? If so, precisely what information and activities would be prohibited and how would that prohibition be enforced?

If the legislature intends to address the procurement or use of "health care information," how does it wish to define that term without running afoul of the First Amendment?

If the legislature wishes to ban the use of promotional materials and gifts to minors in order to obtain otherwise protected "health care information," can this activity already be regulated or prohibited under other state or federal laws, such as the Unfair Trade Practices Act?

Please do not hesitate to contact me if you would like to discuss any of these questions further.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Janet T. Mills", with a stylized, flowing script.

Janet T. Mills

Attorney General